761551N25A - SH-AD (11/90)

COUNTY OF LOS ANGELES

SHERIFF'S DEPARTMENT

DATE: October 24, 2003

OFFICE CORRESPONDENCE FILE:

FROM: RICHARD L. CASTRO, COMMANDER
LEADERSHIP & TRAINING DIVISION

TO: TODD S. ROGERS, CAPTAIN
CARSON STATION

SUBJECT: **EXECUTIVE FORCE REVIEW COMMITTEE FINDINGS AND RECOMMENDATIONS HIT SHOOTING, APRIL 29, 2002, REVIEW #2062537**

The purpose of this memo is to notify you of the review committee's findings and recommendations concerning the use of force incident which occurred on April 29, 2002.

The Committee met on October 23, 2003, and consisted of myself and Commanders Dennis Conte (Commander of the Department) and Michael Savidan (Leadership & Training Division). The Committee determined that the use of force by Deputies Michael Austin #[redacted] and Frankie Lobato #[redacted] was within Department policy. **Please advise the deputies of this finding.**

RLC:KRK:kk

Table of Contents

Los Angeles County Sheriff's Department
Officer Involved Shooting

Report Date: 04-29-02	Bureau/Station/Facility: CARSON STATION	Admin. Invest.? ☐	Hit? ☒

Incident Information

URN: 002-05510-1623-013	Date: 04-29-02	Time: 1930
City or Station: CARSON STATION	Nature of Incident: DEPUTY INVOLVED HIT SHOOTING, SUSPECT DECEASED.	
Location: [redacted] NICOLLE AVENUE, CARSON		

Location Type (*circle one or more*): Backyard, Beach, Business, Freeway, Industrial, Park, Parking Lot, **Residence** (circled), Rural, School, Street, Other: ______

Lighting (*circle only one*): **Darkness** (circled), Daylight, Other, Street Lights

Weather (*circle only one*): **Clear** (circled), Cloudy, Fog, Rain

Distance: 6-10 FEET

Incident Type (*circle one or more*): Accidental, **Armed Person** (circled), Fleeing Suspect, Foot Pursuit, Gun Take Away, Moving Vehicle, Sniper/Ambush, Startle, Struggle Involved, Traffic Stop, Unarmed Person, Unintentional, Vehicle Pursuit, Warrant Service, Other: ______

Initiated by (*circle only one*): Arrest Warrant, **Call** (circled), Observation, One Person Unit, Other, Search Warrant, Two Person Unit

Prior Activity (*circle only one*): Detective, Inmate Transport, Other, **Routine Patrol** (circled)

Total # of Shots Fired by Deputy	Total # of Shots Fired by Suspect
3	0

Aero Unit? ☐ Canine Unit? ☐

Employee Witnesses

Employee #	Last Name	First Name	M.I.	ShiftTime (*circle only one*)	ShiftType (*circle only one*)
[redacted]	GAMEZ	THERESE		EM **PM** Day	**Regular** Overtime Off Duty
[redacted]	KLUTH	DAVID		EM **PM** Day	**Regular** Overtime Off Duty
[redacted]	LONG	ROBERT		EM **PM** Day	**Regular** Overtime Off Duty

Non-Employee Witnesses

Last Name	First Name	M.I.	Street Address	City	Zip Code	Work Ph.	Home Ph.
[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Supervisors

Employee #	Last Name	First Name	M.I.	(*circle one or more*)
[redacted]	PAUSCH	JULIA	K	**On Duty** (circled), Present during shooting, Witness to shooting, Involved in shooting
				On Duty, Present during shooting, Witness to shooting, Involved in shooting

Watch Sergeant

Employee #	Last Name	First Name	M.I.
[redacted]	SHAPLEY	RUSSELL	E

Watch Commander

Employee #	Last Name	First Name	M.I.
[redacted]	COLTON	MICHAEL	R

PSTD Use Only

SH # 2062537

Officer Involved Shooting

Rollout Information

Arrival Date	Arrival Time	Date Submitted	Date of Recommendation
04-29-02	2230	09-24-03	

Employee #	Last Name	First Name	M.I
[redacted]	BERG	MICHAEL	R.
[redacted]	BENJESDORF	TERRY	W.
[redacted]	JOHNSON	GREGORY	H.

Shooting / Force Information

Method

(AW) Arwen
(BC) Baton:(Control)
(BI) Baton:(Impact)
(BF) Bodily Fluids
(CN) Canine
(CR) Carotid Restraint
(CH) Choke Hold
(CT) Control Holds:(Control Techniques)
(TT) Control Holds:(Team Takedown)
(TD) Control Holds:(Takedown)
(CE) Chemical
(OC) Chemical Agents (OC Spray)
(TG) Chemical Agents (Tear Gas)
(EX) Explosives
(FH) Firearm (Handgun)
(FR) Firearm (Rifle)
(FS) Firearm (Shotgun)
(FO) Firearm (Other)
(FB) Flashbang
(FL) Flashlight
(OE) Other Weapon: Edged
(OV) Other Weapon: Vehicle
(OB) Other Weapon: Blunt Object
(OO) Other Weapon: Other
(PK) Personal Weapon: Feet/Leg: (Kick)
(PS) Personal Weapon: Feet/Leg: (Sweep)
(PH) Personal Weapon (Hand/Arm)
(PP) Personal Weapon (Push)
(PO) Personal Weapon (Other)
(RS) Resistance
(CN) Restraint Device (Capture Net)
(RH) Restraint Device (Handcuffs)
(HB) Restraint Device:Hobble (Legs Only)
(TP) Restraint Device:Hobble (TARP)
(RE) Restraint Device: REACT Belt
(SP) Sap
(SH) Shield
(SG) 37mm Stinger
(SB) Sting Ball
(ST) Stun Bag
(TR) Taser
(UC) Uncooperative

Type of Injury

(AB) Abrasion
(BR) Bruise
(BU) Burn
(CP) Complaint of Pain
(CO) Concussion
(DH) Death
(DI) Dislocation
(DB) Dog Bite
(FR) Fractures
(GS) Gunshot
(HB) Human Bite
(LC) Lacerations
(ND) Nerve Damage
(OD) Organ Damage
(PA) Paralysis
(PW) Puncture Wound
(SD) Soft Tissue Damage
(ST) Sprain/Twists
(UN) Unconscious
(RM) Refused Med Treatment
(NN) NONE

Body Part Injured

(AD) Abdomen
(AK) Ankle
(AR) Arm
(BK) Back
(BT) Buttocks
(CH) Chest
(EL) Elbow
(FA) Face
(FE) Feet
(FI) Fingers
(GE) Genitals
(GR) Groin
(HD) Hand
(HE) Head
(HI) Hip
(IN) Internal
(KN) Knees
(LE) Leg
(NK) Neck
(SH) Shoulder
(WR) Wrist

Brand

(AK) AK-47
(BN) Benelli
(BR) Beretta
(BW) Browning
(CH) Charter Arms
(CO) Colt
(DA) Davis Industries
(GL) Glock
(HA) Harrington & Richardson
(HI) Hi Standard
(HK) H & K
(IT) Ithica
(IV) Iver Johnson
(JE) Jennings
(LO) Lorcin
(LU) Luger
(MA) Marlin
(MO) Mossberg
(NC) NCI aka SKS
(NA) North American
(NO) Norinco
(RA) Raven
(RM) Remington
(RG) RG
(RI) RGI
(RO) Rossi
(SW) Smith & Wesson
(SR) Sturm Ruger
(ST) Sterling
(TA) Taurus
(WE) Weatherby
(WN) Winchester
(US) US Government
(YY) Handmade (Inmate)
(XX) Homemade (Non-Inmate)
(ZZ) Other Brand

Caliber

(9) 9 mm
(10) 10 mm
(12) 12 guage
(20) 20 guage
(21) .22-250
(22) .22 caliber
(23) .223 caliber
(24) .243 caliber
(25) .25 caliber
(30) .308 caliber
(35) .357 caliber
(36) 30-60 caliber
(38) .38 caliber
(40) .40 caliber
(41) .410 guage
(44) .44 caliber
(45) .45 caliber
(50) 50 mm
(SL) Slug
(WW) Other caliber

FORCE APPLIED *(one code per block)*

Used By (E# or S#)	Used Against (E# or S#)	Method (Code)	Brand (Code)	Caliber (Code)	Authorized Weapon? (Y/N)	Authorized Ammunition? (Y/N)	Type of Injury (Code)	Body Part (Code)
S1	E1	OO					NN	
E1	S1	FH	CO	45	Y	Y	DH	LE
E1	S1	FH	CO	45	Y	Y	DH	AD
E2	S1	FH	BR	9	Y	Y	DH	FA

See Front Side

Officer Involved Shooting
Involved Employee Information

URN: 002-05510-1623-013

Involved Employee

E 1

Field	Value
Employee #	[redacted]
Last Name	AUSTIN
First Name	MICHAEL
M.I.	D
Sex	M
Race	W
Rank	DEPUTY
Unit Assignment	CARSON
Work Assignment (Unit #, Module, etc.)	169A2
ShiftTime (*circle only one*): EM / PM / Day	PM (circled)
ShiftType (*circle only one*): Regular / Overtime / Off Duty	Regular (circled)
Intoxication/Drug Usage?	☐
Substance Used	
Hospital Admission?	☐
Hospital Name	
Coroner Case?	☐
Coroner Case #	
Interviewed?	☒
Hrs of sleep prior to shooting	6-8
Duty Time (hrs)	[redacted]
Clothing (*circle only one*): Plain Clothes no Vest / Raid Jacket w/ Vest / Plain Clothes w/ Vest / Uniform no Vest / Raid Jacket no Vest / Uniform w/ Vest	Uniform w/ Vest (circled)
Other Factors	
Age	[redacted]
Height	6-3
Weight	230
Range Qualification Date	[redacted]
PPC Qualification Date	[redacted]
Laser Training Date	[redacted]
Certified with Weapon Used?	[redacted]
Patrol Certification?	[redacted]
Certification Unit	[redacted]
Prior Shootings?	☒
Number of Prior Shootings	2
Field Training Officer Emp # / Last Name / First Name / M.I.	[redacted] / [redacted] / [redacted] /
Field Training Officer Emp # / Last Name / First Name / M.I.	[redacted] / [redacted] / [redacted] /

E 2

Field	Value
Employee #	[redacted]
Last Name	LOBATO
First Name	FRANKIE
M.I.	J
Sex	M
Race	W.
Rank	DEPUTY
Unit Assignment	CARSON
Work Assignment (Unit #, Module, etc.)	166T2
ShiftTime (*circle only one*): EM / PM / Day	PM (circled)
ShiftType (*circle only one*): Regular / Overtime / Off Duty	Regular (circled)
Intoxication/Drug Usage?	☐
Substance Used	
Hospital Admission?	☐
Hospital Name	
Coroner Case?	☐
Coroner Case #	
Interviewed?	☒
Hrs of sleep prior to shooting	6-8
Duty Time (hrs)	[redacted]
Clothing (*circle only one*): Plain Clothes no Vest / Raid Jacket w/ Vest / Plain Clothes w/ Vest / Uniform no Vest / Raid Jacket no Vest / Uniform w/ Vest	Uniform w/ Vest (circled)
Other Factors	
Age	[redacted]
Height	5-9
Weight	165
Range Qualification Date	[redacted]
PPC Qualification Date	[redacted]
Laser Training Date	[redacted]
Certified with Weapon Used?	[redacted]
Patrol Certification?	[redacted]
Certification Unit	[redacted]
Prior Shootings?	[redacted]
Number of Prior Shootings	[redacted]
Field Training Officer Emp # / Last Name / First Name / M.I.	/ [redacted] / /
Field Training Officer Emp # / Last Name / First Name / M.I.	

E ___

Field	Value
Employee #	
Last Name	
First Name	
M.I.	
Sex	
Race	
Rank	
Unit Assignment	
Work Assignment (Unit #, Module, etc.)	
ShiftTime (*circle only one*): EM / PM / Day	
ShiftType (*circle only one*): Regular / Overtime / Off Duty	
Intoxication/Drug Usage?	☐
Substance Used	
Hospital Admission?	☐
Hospital Name	
Coroner Case?	☐
Coroner Case #	
Interviewed?	☐
Hrs of sleep prior to shooting	
Duty Time (hrs)	
Clothing (*circle only one*): Plain Clothes no Vest / Raid Jacket w/ Vest / Plain Clothes w/ Vest / Uniform no Vest / Raid Jacket no Vest / Uniform w/ Vest	
Other Factors	
Age	
Height	
Weight	
Range Qualification Date	
PPC Qualification Date	
Laser Training Date	
Certified with Weapon Used?	☐
Patrol Certification?	☐
Certification Unit	
Prior Shootings?	☐
Number of Prior Shootings	
Field Training Officer Emp # / Last Name / First Name / M.I.	
Field Training Officer Emp # / Last Name / First Name / M.I.	

Officer Involved Shooting
Suspect Information

URN: 002-05510-1623-013

Suspect Information

S 1

Last Name: MILLER	First Name: BRIAN	M.I. K
AKA Last Name	First Name	M.I.

Sex: M Race: W.	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: 42 D.O.B. 11-15-59	Height: 6-0 Weight: 211	FBI #	CII #
Booking # NONE	Primary Charge: NONE	Secondary Charge: NONE	
Coroner Case? ☒	Coroner Case # 2002-03322	Intoxication/Drug Usage? ☒	Substance Used: ALCOHOL
Armed? ☒	Apprehended? ☒	Mental Illness? ☒	Criminal History?
Vehicle Make NONE	Model:	Year:	

S __

Last Name	First Name	M.I.
AKA Last Name	First Name	M.I.

Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make	Model:	Year:	

S __

Last Name	First Name	M.I.
AKA Last Name	First Name	M.I.

Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make	Model:	Year:	

S __

Last Name	First Name	M.I.
AKA Last Name	First Name	M.I.

Sex: Race:	Street Address:	City	State & Zip Code:
Work Phone:	Home Phone:	Social Security #:	Driver's License #:
Age: D.O.B.	Height: Weight:	FBI #	CII #
Booking #	Primary Charge:	Secondary Charge:	
Coroner Case? ☐	Coroner Case #	Intoxication/Drug Usage? ☐	Substance Used:
Armed? ☐	Apprehended? ☐	Mental Illness? ☐	Criminal History? ☐
Vehicle Make	Model:	Year:	

See Other Side

SUPPLEMENTAL NON-EMPLOYEE WITNESSES
Los Angeles County Sheriff's Department

Non-Employee Witnesses

Last Name [redacted]	First Name [redacted]		M.I. [redacted]
Street Address [redacted]	Zip Code [redacted]	Work Ph [redacted]	Home Ph [redacted]
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph
Last Name	First Name		M.I.
Street Address	Zip Code	Work Ph	Home Ph

INVESTIGATIVE SUMMARY
DEPUTY-INVOLVED HIT SHOOTING;
SUSPECT DECEASED
IAB# SH2062537
URN: 002-05510-1623-057

On Monday, April 29, 2002, Sergeants Michael Berg and Terry Benjesdorf of the Internal Affairs Bureau responded to Carson Station regarding a deputy-involved hit shooting, suspect deceased. Internal Affairs Bureau Lieutenant Greg Johnson also responded.

Deputy Michael Austin and his [redacted] Therese Gamez, responded to a disturbance call at [redacted] Deputy Frankie Lobato also responded to the location. As deputies drove to the location, the call was upgraded to a "man with a knife" situation. Upon arrival at the location, Austin and Gamez were told by the occupants that the suspect and [redacted] possessed a knife and had run into the backyard and over a wall. Austin directed assisting units to a street behind the location to check for the suspect, and requested an aero unit.

Austin heard what he thought was a female screaming in the garage of the location. One of the occupants yelled that the suspect was in the garage. Austin believed the suspect was armed, and someone could be in danger in the garage. Austin crawled under a partially open garage door. The door was blocked by a vehicle parked in the driveway, and could only be opened about two feet.

When Austin crawled into the garage, he encountered Suspect Miller standing across the garage next to a washer and dryer. Miller held an axe in one hand. The garage was filled with clutter, debris and a dune buggy. Additionally, a caged parrot was in the garage, which had caused the screaming sound Austin heard. Austin ordered Miller to drop the axe, and broadcast he was detaining a suspect at gunpoint. Austin told Gamez to go around to the rear of the garage. Gamez ran around to the rear access door of the garage. She was soon joined by Deputy Lobato. The deputies continued to order the suspect to drop the axe. Suspect Miller told the deputies, "You'll have to shoot me."

Austin told Gamez to go to the rear of the house and contain the garage access door into the house, in case the suspect fled into the residence. Gamez initially complied, but stopped and returned toward the outside garage access door when she realized she might be in a crossfire situation.

Deputy Austin and Deputy Lobato continued to order the suspect to drop the axe. The suspect focused his attention on Deputy Lobato, raised the axe, and took a step toward Deputy Lobato, stating, "I'm gonna do it." Lobato was approximately 5-6 feet away from the suspect and believed the suspect would swing the axe at him. Lobato could not retreat due to the debris in the garage, and because he did not want to leave Austin alone with the suspect. As the suspect brought the axe back to swing, Austin fired two rounds and Lobato fired one round. The suspect was struck by all three rounds; one round in the left cheek, one round in the abdomen, and one round in the upper left thigh.

Deputy Kluth arrived in the garage, along with several other deputies. Deputy Kluth handcuffed the suspect. Deputy Austin radioed for paramedics to respond to the location. The suspect was transported to Harbor/UCLA Medical Center, where he was pronounced dead. No deputies were injured.

Lt. Ralph Webb from Civil Litigation and Deputy Jason Wolak from Force Training also responded to the scene.

INVOLVED PERSONNEL

AUSTIN, Michael, Deputy #[redacted]
Field Operations Region II
Carson Station

LOBATO, Frankie, Deputy #[redacted]
Field Operations Region II
Carson Station

EMPLOYEE WORK HISTORY:

AUSTIN, Michael

Date of Employment	06/28/91
Date assigned to Patrol	[redacted]
Completed Patrol Training	[redacted]
Prior Shooting Incident(s)	2
Prior Founded Force Incidents	[redacted]

LOBATO, Frankie

Date of Employment	02/24/89
Date assigned to Patrol	[redacted]
Completed Patrol Training	[redacted]
Prior Shooting Incident(s)	[redacted]
Prior Founded Force Incidents	[redacted]

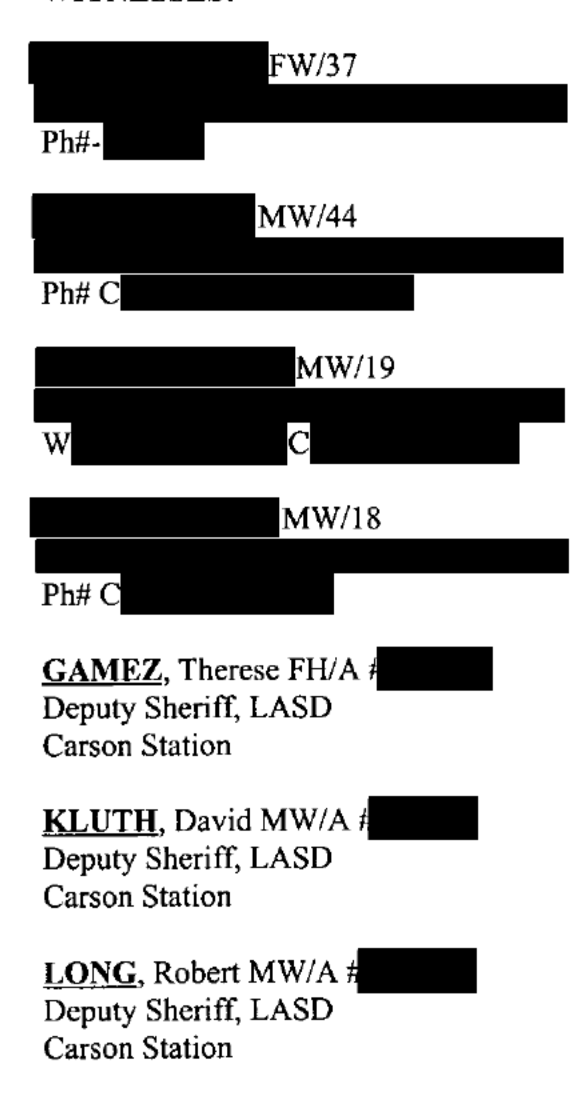
SUSPECT/INMATE:

Miller, Brian Keith MW/42 No Booking # (Deceased)

Suspect Miller had an [redacted] A check of the CCHRS (Consolidated Criminal History Reporting System) revealed that Suspect Miller (CII# [redacted] had been

Please refer to the CCHRS printout included in the **Miscellaneous Documents** Section.

WITNESSES:



FW/37

Ph#-

MW/44

Ph# C

MW/19

W C

MW/18

Ph# C

GAMEZ, Therese FH/A #
Deputy Sheriff, LASD
Carson Station

KLUTH, David MW/A #
Deputy Sheriff, LASD
Carson Station

LONG, Robert MW/A #
Deputy Sheriff, LASD
Carson Station

INJURIES:

MILLER, Brian

-(1) fatal gunshot wound to left cheek/jaw area.
-(1) fatal gunshot wound to the upper, left quadrant of the abdomen.
-(1) non-fatal, through-and-through gunshot wound to the upper left thigh area.

Refer to the L.A. County Coroner's report #2002-03322 for further information (included in **Exhibit A**, p.74-92).

Suspect Miller was treated at the scene by paramedics. He was initially found by paramedics with no signs of life. Paramedics from Station 36 (Paramedics Popp, Conner and Lee) initiated life saving efforts. Miller was transported via AMR ambulance to the Emergency Room at Harbor/UCLA Medical Center in Torrance. Miller was pronounced dead at the hospital by ER Dr. Lipsky at 2011 hours. Miller's injuries were consistent with the force reported by the deputies. No deputies were injured.

PHYSICAL EVIDENCE:

Refer to the Homicide Book, Exhibit A, p. 54-70 for Physical Evidence gathered at the crime scene(s) and processed by the Crime Lab. It appeared that Deputy Austin fired the rounds which struck the suspect in the abdomen and leg. Deputy Lobato fired the round which struck the suspect in the cheek/jaw. That information is based on coroner and crime lab opinions and reports, shooter deputies' statements and positions, and evidence gathered. Refer to the Homicide, Crime Lab, and Coroner reports containing in the Homicide Book, **Exhibit A**, pages 54-86.

Crime Lab estimates place the suspect 14' 6" from Deputy Austin at the time of the shooting, and 6' 7" from Deputy Lobato at the time of the shooting (Homicide Book, p. 32). All evidence was located inside the garage (**Exhibits C, J, & K**) except for one expended shell casing belonging to Deputy Lobato. This was located just outside of the rear garage door (**Exhibit K**).

INVESTIGATOR OBSERVATIONS:

The physical evidence at the shooting scene (positions of the deputies' shell casings, bullet hole in the washing machine, position of the suspect's weapon, blood stains) appears to be consistent with the deputies' versions of the events. The shooting scene (garage of the location), was cluttered with debris, boxes and a dune buggy. Refer to the Homicide Book for additional scene observations. Also, refer to **Exhibits D-K** for photographs of the scene.

WEAPONS USED BY DEPUTY PERSONNEL:

Deputy Austin, Michael

Departmental-issued service firearm; Heckler and Koch, USP, .45 caliber, serial #[redacted] 2 rounds of duty issue .45 caliber ammunition fired.

Deputy Lobato, Frankie

Departmental-issued service firearm; Beretta 92F, 9mm, serial #BER[redacted]Z; 1 round of duty issue 9mm ammunition fired.

WEAPONS USED BY SUSPECT:

Full size, single blade axe with a standard size wooden handle (**Exhibit C**, photo).

PROPERTY DAMAGE:

The following private property was damaged:

Civilian residence at [redacted] This home was the scene of the shooting incident. The washing machine suffered one bullet strike to the front side (refer to photo, **Exhibit J**). The bullet traversed the interior of the washing machine and was recovered underneath the machine. This round was a through-and-through wound from the suspect's leg.

> **IAB Note: There were numerous blood spatters throughout the inside of the location, however, they occurred prior to deputies' arrival on scene and the shooting. The splatters occurred during the altercation between the suspect and his [redacted] Photos of these blood splatter were not included as exhibits in this case.**

CRIMINAL INVESTIGATOR and CHARGES FILED:

No criminal charges were filed. Homicide Investigators Cheek and Salerno handled the incident.

LIGHTING OR WEATHER CONDITIONS:

The incident occurred at approximately 1930 hours. The incident occurred in a lighted garage at the location.

INVOLVED EMPLOYEE STATEMENTS:

Deputy Austin, Michael

Deputy Austin was working a uniformed patrol car (167A2) with his partner and [redacted] Deputy Therese Gamez. Austin and Gamez responded to a family disturbance call at [redacted] to provide back up. They were not assigned to the call but were close by the location. The call initially stated that two [redacted] were fighting, however, the call was amended to one of the suspects was armed with a knife. Austin responded Code 3 to the location.

Upon arrival, Austin was contacted by four occupants of the location in the front yard. [redacted] the suspect's [redacted] told Austin he had been involved in a fight with his [redacted] (Suspect Brian Miller). Austin saw [redacted] bleeding from his lip. [redacted] gave Austin a description of the suspect, and

added that the suspect jumped over the back fence and was armed with a knife. Austin directed responding units to the east of the location, and requested an aero unit. Austin then heard a noise coming from the garage like a woman screaming. One of the occupants told Austin the suspect was in the garage.

Austin believed the armed suspect was in the garage, possibly harming someone. Austin ran to the front garage door. The door was open approximately two feet, but could not be opened further due to two cars parked closely to the door in the driveway. Austin crawled under the partially open southwest corner of the garage door to check on the potential welfare of anyone in the garage. Once inside the garage, he saw the suspect standing at the rear of the garage (northeast corner) holding an axe. The suspect held the axe by his side with the blade downward. Austin could move farther into the garage due to a dune buggy blocking his access. He climbed onto the rear, right wheel of the dune buggy, and ordered the suspect to drop the axe. The suspect refused and asked to talk to his brother. Austin described the axe as a three foot long, wood-handled axe with a large blade.

Austin broadcast he was detaining the suspect inside the garage at gunpoint. Austin directed Gamez to the rear access door of the garage. Seconds later, he saw Gamez and Deputy Lobato at the doorway rear, garage door. Austin advised the two deputies to make sure the backyard was cleared and contained. Lobato entered into the garage from the doorway as Austin advised Lobato where the suspect stood. Lobato drew his weapon and pointed it at the suspect. The suspect again stated he wanted to talk to his brother. Austin told the suspect to drop the axe and he could speak to his brother. As the suspect stood in front of a washer and dryer, he turned on a stereo (photo, **Exhibit I**), which was on a shelf above the appliances.

The suspect yelled at the deputies that they would have to shoot him. The suspect refused to drop the axe, and held it in front of him like a baseball bat. Both deputies continued to order the suspect to drop the axe. The suspect raised the axe like he was about to take a swing, and stepped toward Deputy Lobato. Lobato, who was just inside the doorway, stepped backward toward the south wall until he was halted by the debris in the garage.

As the suspect raised the axe, Lobato yelled, "Mike! Mike! Mike! (Austin's first name)" Austin believed the suspect was going to swing the axe at Lobato. Austin fired two round at the suspect. The suspect spun away, and fell face first against the washer and dryer. Deputy Kluth and other deputies Austin could not recall, ran into the garage. Kluth handcuffed the suspect as Austin broadcast a request for paramedics and shooting information.

After the incident, Austin saw a birdcage which contained a squawking parrot (photo, **Exhibit I**). Austin believed the squawking sounded like the sound he believed to be a woman screaming. He saw the garage was cluttered with property and debris. Austin was taken to the station following the incident.

At the station, Austin's weapon (.45 caliber H & K semi-automatic pistol) was taken and examined by Homicide detectives. Austin carried the weapon with eleven live rounds in the magazine and one live round in the chamber. The weapon was found to contain 9 live rounds in the magazine and one

live round in the chamber. This confirmed Austin had fired two rounds. The Crime Lab took possession of Austin's weapon. Refer to the Homicide Book for further information regarding Austin's weapon.

Deputy Lobato, Frankie

Deputy Lobato was working a uniformed, one-man patrol car (166T2). Lobato responded to a family disturbance/man with a knife call at [redacted] as an assigned assisting unit. As he responded, the call was updated to a Code 3 response. Lobato arrived at the location as the same time as Deputies Austin, Gamez and Long. Lobato saw Austin speak with a person in front of the location. Austin then advised Lobato via radio the suspect had run east over a fence. Lobato drove to the street east of the location (Rashdall Avenue) to set up a containment.

When Lobato reached Rashdall Avenue, he heard Austin broadcast he was detaining a suspect at gunpoint in the garage of the location. Lobato returned to the location. [redacted] and his [redacted] were in the front yard and told Lobato, "He's in the garage." Lobato heard Austin inside the garage giving orders to the suspect. Lobato heard Austin say, "Drop it" and "Don't do this" several times. Lobato heard screaming and other noises coming from the garage.

Lobato saw the garage door open about a foot. The door was up against a vehicle in the driveway which prevented it from opening further. Lobato was advised by [redacted] to go through the house, backyard, and into the garage from the rear door. As Lobato approached the rear garage door, he heard Austin giving orders and another voice yelling. Lobato met Gamez at the rear garage door. Gamez left the door, and Lobato entered the rear door, which was partially open. Lobato saw the garage was full of items and a dune buggy, but was well lit.

Lobato saw a tall, white male holding an axe. He was approximately 2 feet behind the rear garage door, and 5 feet away from Lobato. Lobato moved backward (south) into the garage and away from the suspect. The suspect held the axe with both hands in front of his body. Lobato saw the suspect sweating profusely, and he was angry and emotional. Lobato believed the suspect was under the influence of something. Lobato could see Austin in his peripheral vision, approximately 6-8 feet to his left (west) in the garage behind the dune buggy.

Austin yelled at the suspect to drop the axe, and told him, "Don't do it. Don't let it end this way." The suspect stated several times, "You're gonna have to kill me! Kill me! Kill me!" The suspect focused on Lobato, and looked directly at him. Lobato saw a look of fear in the suspect's eyes, and Lobato had the same look. The suspect lifted the axe as if to swing it like a baseball bat. The suspect said, "I'm gonna do it." Lobato believed the suspect was going to swing the axe at him. The suspect took a step forward, toward Lobato, and appeared ready to swing the axe. Lobato yelled, "Mike! Mike! Mike!" Lobato yelled to Austin (Mike) so he would watch out for him, or to let Austin know he (Lobato) was about to shoot. The way the suspect was looking at Lobato scared him.

The suspect was approximately 5-6 feet away from Lobato. Lobato felt threatened due to the proximity of the suspect, the size of the suspect, and the reach of the suspect with the axe. Lobato could not retreat further due to the debris in the garage, and could not leave the garage (via the rear door) because he did not want to leave Austin alone. When the suspect brought the axe back to swing, Lobato feared for his safety and fired one round at the suspect. He believed the round hit the suspect in the face. Simultaneously, Austin fired. The suspect stopped mid-swing and spun around, falling to the ground and dropping the axe.

At the station, Lobato's weapon (9mm Beretta semi-automatic pistol) was taken and examined by Homicide detectives. Lobato carried the weapon with fifteen live rounds in the magazine and one live round in the chamber. The weapon was found to contain 14 live rounds in the magazine and one live round in the chamber. This confirmed Austin had fired one round. The Crime Lab took possession of Lobato's weapon. Refer to the Homicide Book for further information regarding Lobato's weapon.

WITNESS STATEMENTS:

Deputy Witnesses

Deputy Gamez, Therese

Deputy Gamez was working a uniformed patrol car (167A2) with his partner and [redacted] Deputy Michael Austin. Austin and Gamez responded to a family disturbance call at [redacted] [redacted] The call was upgraded to a "man with a knife" call. They were the first unit to arrive at the location, where they contacted [redacted] was bleeding from his mouth. [redacted] told them he had been in a fight with his [redacted] and his [redacted] had run into the backyard and jumped a wall. Austin coordinated assisting units to the rear of the location.

Gamez heard a "squawking" noise coming from the garage at the location. The noise sounded like someone screaming. She later determined the noise was made by a caged parrot inside the garage. Austin went to the front garage door and Gamez followed. Austin could only partially open the garage door. He crawled under the garage door. Gamez attempted to follow Austin, but he stopped suddenly. Gamez backed away from Austin, but heard Austin shout at someone, "Drop the axe! Drop the axe!" Gamez needed to get into the garage, so she ran around the south side of the garage to the rear, east garage door.

Gamez arrived at the rear garage door and yelled to Austin that she was entering the back door. Gamez pushed the door inward and had her weapon drawn. She saw Austin standing across the garage on the west side. Austin was pointing his gun at an "oversized white guy holding an axe." The suspect held the axe in front of his body with both hands. Gamez estimated the axe to be 2-3 feet in length.

Gamez could not push the door completely open. She could see the suspect through a 2-3 inch space in the door jamb/door hinge area. She saw the suspect standing in the northeast part of the garage in front of a washer and dryer. The garage was cluttered with debris. There was not much space to stand inside the rear door. Gamez heard Austin broadcast what was occurring inside the garage.

Gamez ordered Miller to drop the axe several times, as did Austin. The suspect ignored their commands. Miller went to a stereo, turned it on, and raised and lowered the volume. Miller rested the axe on his right should as he adjusted the stereo. Gamez became aware of Deputy Lobato standing next to her at the rear door. Gamez believed the suspect could gain access into the house via an interior garage door into the residence. She was unsure if anyone was in the residence, but thought the suspect could harm anyone in the house if he entered.

Austin told Gamez to go around to the side of the house. Gamez left her position, and Lobato took over Gamez' position. Gamez ran to the east (rear) side of the house. She started to enter the east door of the residence, but realized if there was a shooting, she would be in the line of fire. Gamez exited the door and walked back toward the rear garage door. As she approached the door, she heard Austin and Lobato yell at the suspect to put the axe down. Within seconds, she heard gunshots from inside the garage.

Gamez did not remember the suspect make any statements during the incident, but she did remember him smoking a cigarette at some point. The suspect did not respond to the deputies' commands and ignored the deputies. Gamez did not fire her weapon.

Deputy Kluth, David

Deputy Kluth was assigned the handle of a disturbance call at the location. As he drove to the location, the call status was upgraded to a "man with a knife." Kluth responded Code 3. Prior to his arrival, Deputy Lobato made a radio broadcast that a male was running east over a fence from the location. Seconds later, Deputy Austin broadcast that he was detaining a male armed with an axe, at gunpoint in the garage of the location. Austin confirmed he was detaining the same man that had ran.

Kluth ran toward the location to assist Austin. He was in front of [redacted] when he heard three shots fired from inside the location. He heard Deputy Lobato broadcast a "deputy-involved shooting" and heard Lobato request paramedics.

Kluth ran to the front garage door and was directed by Deputy Long to go to the rear, backyard of the garage. Kluth did so, and entered the rear garage door. As he entered, he saw Deputies Austin and Lobato pointing their guns at the suspect. The suspect was lying on the floor of the garage, next to a washer and dryer. The suspects head was north of the washer with his feet west of the dryer. The suspect's left side was on the floor and his right shoulder was against the washer. The suspect's left hand was underneath his body. Kluth saw a large axe on the floor by the suspect's feet. Kluth went to the suspect and handcuffed his hands behind his back, after moving him to access his left hand.

When paramedics arrived, Kluth saw one of them kick the axe out of the way in order to render medical aide to the suspect. To protect the evidence, Kluth picked up the axe and placed it on a pile of blankets and clothing, next to where the axe had laid. Kluth watched the paramedics treat the suspect.

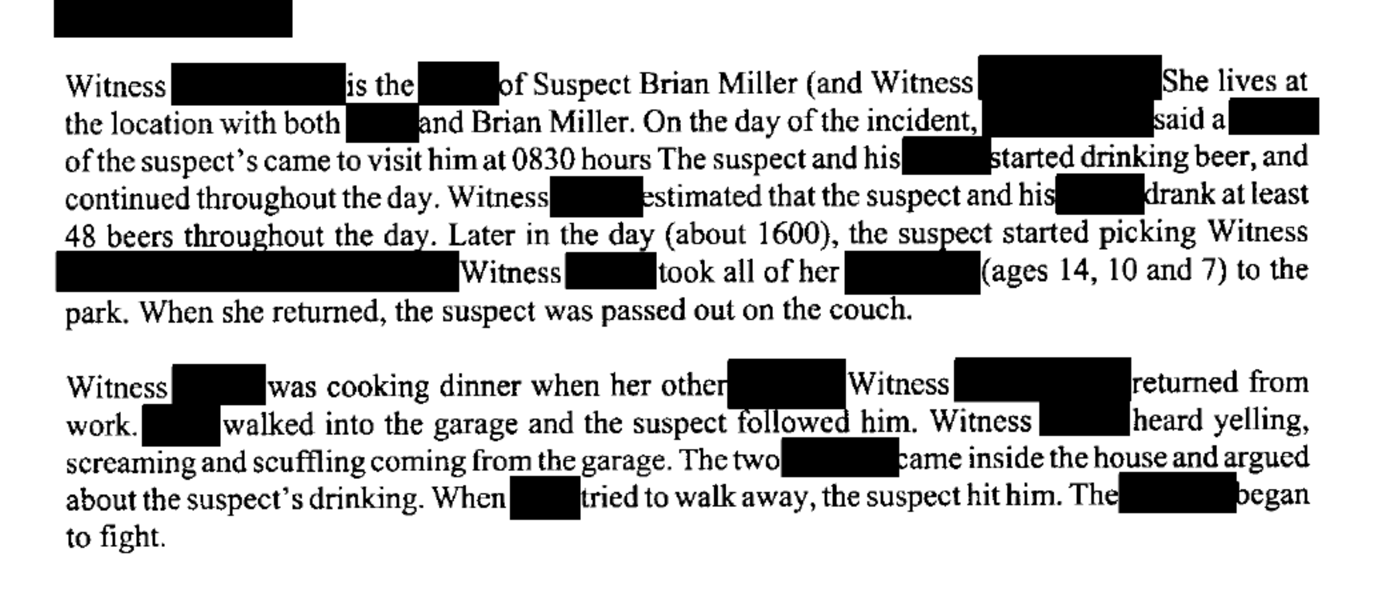
Deputy Long, Robert

Deputy Long responded to the location regarding an assistance request by Deputy Austin, who was detaining a man with an axe in the garage of the location. Long saw the garage door was pushed up about three feet. Long did not know where the suspect was inside of the garage. He took a position at the southwest corner of the house near the partially opened garage door, in case the suspect tried to exit from the garage door.

While standing at his location, Long heard the suspect say, "I want you to kill me." He heard Deputy Lobato say, "We don't want to you." Approximately 3-5 seconds later, Long heard 3-4 gunshots come from inside of the garage, followed by a deputy transmitting a "shots fired" call over the radio.

Long tried to open the garage door to enter, but was unable to open the door because it was blocked by a vehicle in the driveway. He ran into the backyard through the gate on the south side of the house. When he entered the garage through a rear door, he saw Deputy Kluth handcuff the suspect. the suspect was lying face down on the garage floor. Long saw a large axe on the ground near the suspect's feet.

__Civilian Witnesses__



Witness [redacted] is the [redacted] of Suspect Brian Miller (and Witness [redacted] She lives at the location with both [redacted] and Brian Miller. On the day of the incident, [redacted] said a [redacted] of the suspect's came to visit him at 0830 hours The suspect and his [redacted] started drinking beer, and continued throughout the day. Witness [redacted] estimated that the suspect and his [redacted] drank at least 48 beers throughout the day. Later in the day (about 1600), the suspect started picking Witness [redacted] Witness [redacted] took all of her [redacted] (ages 14, 10 and 7) to the park. When she returned, the suspect was passed out on the couch.

Witness [redacted] was cooking dinner when her other [redacted] Witness [redacted] returned from work. [redacted] walked into the garage and the suspect followed him. Witness [redacted] heard yelling, screaming and scuffling coming from the garage. The two [redacted] came inside the house and argued about the suspect's drinking. When [redacted] tried to walk away, the suspect hit him. The [redacted] began to fight.

told her and to block the door to their room. The elderly lived in a back bedroom of the residence and was bedridden. took her youngest to a house (her other had returned to the park earlier). When returned to the house, she saw the fighting had escalated and she called 9-1-1. The suspect continued to punch his throw him against the wall, and exclaimed, "I want to kill you, dude!"

went to the backyard where she heard the fighting in the kitchen. She herd the suspect continue to threaten his and heard the mixer, cutting boards and knives being jostled. She believed the suspect was going to stab since he had been sharpening knives the past two days. entered the house and saw her blocking the doorway to their room. saw with blood on him and told her the suspect "Wigged out" and went crazy.

went back to the front yard where and the suspect were talking. heard approaching sirens and the suspect stated, "That fucking bitch called the cops on me. I'm gonna kill her!" The suspect ran to the back yard and jumped over the rear fence. heard dogs barking, then the suspect jumped back into the rear yard. had entered the garage because their bird was squawking. heard the suspect yelling at telling him, "Fuck you." yelled to to get out of the garage. told 'He's (suspect) going to make them (deputies) shoot him."

Deputies arrived and told Deputy Lobato to go through the house to the back yard to get into the garage. Other deputies ran toward the garage, but she did not see them enter the garage. Other deputies ran through the side yard, toward the backyard. did not hear the deputies saying anything. She could only hear the bird screaming. went into the house to get her She then heard the sound of five gunshots from the garage, and she ran out to the front yard.

said the suspect's behavior was "scary." She said when he drank alcohol, it was like, "Instant asshole, just add alcohol." She said the suspect had been violent in the past, suicidal, and had spent time in the psychiatric ward at Harbor/UCLA Medical Center. said the suspect had been drunk six days in the past week, and she had known him to use drugs in the past, including: GHB, methamphetamine, cocaine, PCP and others. She did not know if he used drugs on the day of the incident. also added that she wanted to thank the deputies. She said they did nothing wrong and they could not have prevented the shooting. She did not know what would have happened to her members if the police had not arrived when they did.

Witness is the suspect's They both live at the location, as well as Witness (their and Witnesses and arrived home from work around 1900. He saw and on the porch. They told him the suspect had been drinking and had passed out. Witness went into the house, then the garage. He

smelled a strong odor of beer in the garage, then the suspect walked in. They began to have a discussion about the suspect's drinking, and the suspect told Witness [redacted] he wanted to fight. Witness [redacted] walked back into the house.

The suspect followed [redacted] into the house, pushed him, then punched him on the cheek. Suspect Miller continued to hit [redacted] 15-20 times all over. [redacted] pushed the suspect away. The suspect calmed down and they walked out to the front yard. They sat on [redacted] tailgate of his truck. The suspect became agitated, then calmed down until he heard sirens. The suspect ran along the south side of the garage and into the backyard. When deputies arrived, [redacted] motioned where the suspect ran.

Witness [redacted] saw two deputies run into the backyard. One deputy went to the southwest front corner of the garage. He saw the front garage door start to open, but it could only partially be opened due to a car in the driveway blocking the door. [redacted] heard several deputies yelling commands to the suspect in the garage. Deputies yelled, "Put it down!" The suspect's responses were incoherent. The yelling continued for a couple of minutes, then [redacted] heard more than 3 gunshots in the garage. Witness [redacted] was about twenty feet from the garage on the front sidewalk when he heard the shots.

Witness [redacted] said the suspect acts physically aggressive when he drinks. He saw an empty 12-pack of beer inside the garage prior to his fight with the suspect.

Witness [redacted] the [redacted] of Witness [redacted] lives at the location. Throughout the day of the incident, [redacted] Suspect Brian Miller, had been drinking and was in a "pissed off mood." Witness [redacted] left the house because he knew how the suspect behaved when he drank. Witness [redacted] returned to the location between 1830-1920 hours, and found the suspect passed out on the couch. [redacted] told him the suspect had been "acting up" that day and had thrown a knife and a brick at other [redacted] members. Witness [redacted] saw his other [redacted] take laundry to the garage. [redacted] came out of the garage and asked the suspect if there had been a party there since everything smelled like beer. Witness [redacted] saw [redacted] and the suspect arguing in the garage, they yard and the kitchen. [redacted] tried to avoid the suspect. Witness [redacted] took the knives out of th kitchen and hid them so the suspect could not get them. The suspect told [redacted] that he was going to kill him.

Witness [redacted] believed the suspect was intoxicated and belligerent. [redacted] and the suspect began to fight in the living room or kitchen when the suspect "got into [redacted] face." The suspect took several swings at [redacted] and [redacted] pinned him to a wall. [redacted] tried to calm the suspect down, but the suspect continued to hit [redacted] The suspect continued hitting [redacted] in the face and body as the two went into the hallway. Witness [redacted] saw [redacted] face was bleeding. Witness [redacted] and his [redacted] blocked the doorway to their [redacted] room. Witness [redacted] picked up a two-by-four piece of wood and intended to hit the suspect with it in order to stop the assault on [redacted]

asked for the hone to call the police and she went into the yard. and the suspect went into the front yard and were talking. Later, Witness could hear approaching sirens. Witness went into the front yard and saw an open gate leading to the backyard. He did not the suspect. He saw the front garage door was partially opened, and thought the suspect was inside the garage.

Witness saw the deputies arrive at the location. He heard deputies repeatedly order the suspect to "Drop the axe!" and "Put the axe down!" Witness could hear the suspect reply but could not make out what he was saying. Witness heard 3-4 shots come from inside the garage. Witness did not want to be around any longer, and he started to walk down the street until he was detained by deputies.

Witness described the suspect as not being happy unless he was complaining. further described the suspect as a "dick" to everyone, and an "asshole" all the time. Witness did not remember the suspect being violent in the past, but believed he was crazy.

Witness the of Witness lives at the location. He was inside the location playing video games, when his (Witness came home from work. His other Suspect Brian Miller, was asleep on the couch. A brief time later, the suspect woke up and was drunk. The suspect argued with the suspect about the smell of beer in the house and garage. The suspect yelled at and wanted to fight. walked away from the suspect and the suspect followed him into the hallway. The suspect struck several times in the face and stomach with his fists, and pushed him against the wall. Witness saw bleeding from his mouth. The suspect yelled obscenities at and they went into the kitchen.

and Brian Miller went to the front yard, then called the Sheriff's Department. A short time later, Witness saw deputies drive up to the house. The suspect disappeared, then Witness realized the suspect was in the garage. Witness was standing in the front yard. He saw deputies run to the garage through the partially opened front garage door, and into the backyard. The front garage door was open 1-3 feet. Witness could not see into the garage. He heard the deputies order the suspect to "Drop the axe." It seemed to that the suspect was not complying with the deputies commands because he could not hear the suspect respond. The deputies continued to order the suspect to drop the axe. Moments later, Witness heard three gunshots come from the garage. Witness heard screaming from his pet parrot (which was caged in the garage) during the incident.

Witness was aware there was an axe in the garage. He knew the suspect had been drinking beer throughout the day and considered him an alcoholic.

Witness saw additional deputies arrive, as well as paramedics. The suspect was transported to the hospital.

IAB Note: A neighborhood canvass of homes surrounding the location was completed by deputies. No significant information was developed from these interviews. Most people heard gunshots, heard sirens and cars, or heard nothing. None of the neighbors directly witnessed anything relating to the incident. For a complete list of the houses and neighbors interviewed, refer to the Homicide Book, pages 17-19.

SUSPECT/INMATE STATEMENTS:

Miller, Brian

No statement– deceased.

IAB Note: According to witness statements (from [redacted] that resided with the suspect and were in the home prior to the shooting), the suspect was drunk at time of shooting. Per the Coroner's report (Exhibit A, pg. 83), a toxicology screen was ordered. However, there is no follow up documentation which records the blood alcohol level of the suspect.

MISCELLANEOUS SECTION:

None



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

STEVE COOLEY • District Attorney
CURT LIVESAY • Chief Deputy District Attorney
PETER BOZANICH • Assistant District Attorney

DAVID H. GUTHMAN • Director

October 30, 2002

Captain Frank Merriman
Los Angeles Sheriff's Department
Homicide Bureau
5747 Rickenbacker Road
Commerce, California 90040

Dear Captain Merriman:

Re: J.S.I.D. File # 02-0434
L.A.S.D. File # 002-05510-1623-057

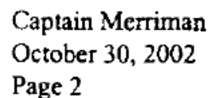
The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed a review of the April 29, 2002, fatal shooting of Brian Miller by Los Angeles County Sheriff's Deputies Michael Austin and Frank Lobato. It is our conclusion that Deputies Austin and Lobato acted lawfully in self-defense and in defense of others.

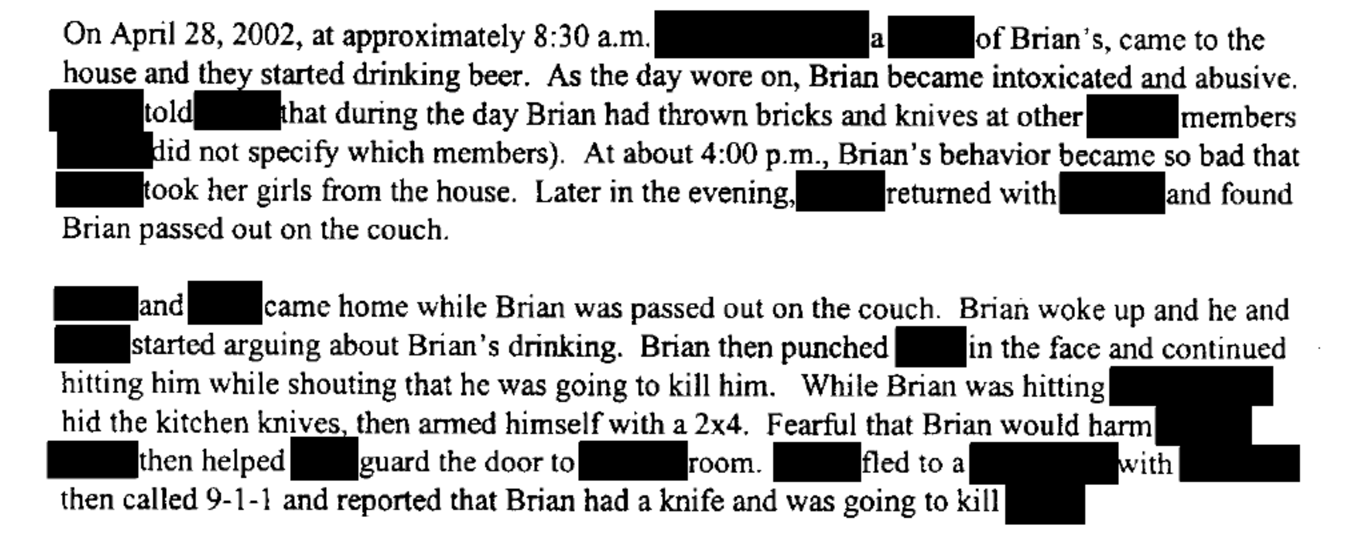
The following analysis is based on reports prepared by the Los Angeles County Sheriff's Department, submitted to this office by Detective Frank Salerno, Sheriff's Homicide Bureau, on September 16, 2002. The District Attorney Command Center was notified of this shooting on April 28, 2002, at 8:44 P.M. The District Attorney Response team, consisting of Deputy District Attorney Dan Baker and District Attorney Senior Investigator [redacted] responded to the scene. They were given a briefing of the circumstances surrounding the incident and a "walk through" by Sheriff's Lieutenant Tom Martin. They interviewed, in conjunction with Sheriff's investigators, four civilian witnesses.

FACTUAL ANALYSIS

Brian Miller lived at [redacted] with his bedridden [redacted] age 65, his [redacted] his [redacted] and [redacted] [redacted] 19, [redacted] 18, [redacted] 14, [redacted] 10, and [redacted] 7. [redacted] told investigators that Brian had been involuntarily committed to the psychiatric ward of Harbor UCLA Medical Center several times due to his suicidal tendencies. She also reported that he was a heavy drinker, and said his behavior was described best by the T-shirt which had printed on it, "Instant asshole, just add alcohol."

Criminal Courts Building
210 West Temple Street
Los Angeles, CA 90012-3210
WEBSITE: http://www.co.la.ca.us/da





On April 28, 2002, at approximately 8:30 a.m. a of Brian's, came to the house and they started drinking beer. As the day wore on, Brian became intoxicated and abusive. told that during the day Brian had thrown bricks and knives at other members did not specify which members). At about 4:00 p.m., Brian's behavior became so bad that took her girls from the house. Later in the evening, returned with and found Brian passed out on the couch.

and came home while Brian was passed out on the couch. Brian woke up and he and started arguing about Brian's drinking. Brian then punched in the face and continued hitting him while shouting that he was going to kill him. While Brian was hitting hid the kitchen knives, then armed himself with a 2x4. Fearful that Brian would harm then helped guard the door to room. fled to a with then called 9-1-1 and reported that Brian had a knife and was going to kill

By the time deputies arrived, Brian had armed himself with an axe from the garage of the residence. When Deputy Austin ducked under the partially opened front door of the garage, Brian confronted him with the axe. Deputy Austin repeatedly told Brian to put the axe down, but Brian refused. Meanwhile, Deputy Lobato went to the rear door of the garage. When Lobato entered the rear door, Brian raised the axe with both hands as if to swing it like a baseball bat, looked Deputy Lobato in the eye, and shouted, "I'm going to do it." Brian was only six feet from Deputy Lobato at this point.

When Brian drew the axe back as though he were going to swing it at Deputy Lobato, Deputy Austin shot twice. Simultaneously, Deputy Lobato shot once. Brian spun around and fell to the ground. He was taken to Harbor UCLA Medical Center, where he was pronounced dead as a result of his wounds. He had been shot once in the cheek, once in the abdomen, and once in his left thigh. His post-mortem blood alcohol level was .22%.

CONCLUSION

It is well established law in California that deadly force in defense of self or of another is justified when a person actually and reasonably believes that he or another is in imminent danger of great bodily injury or death. See *People v. Williams* (1975) 75 Cal.App.3d 731, 739, citing *People* v. *Glover* (1903) 141 Cal. 233, 239 and *People* v. *Ortiz* (1923) 63 Cal.App. 662, 668.

Brian clearly posed an immediate threat to Deputies Lobato and Austin. Even though repeatedly told to put down the axe, he instead lifted it as though he was going to swing it at Deputy Lobato. He was well within striking distance of Deputy Lobato. Under these circumstances, Deputy Austin's and Deputy Lobato's fear that there was imminent danger of great bodily injury or death to Deputy Lobato was reasonable.

Therefore, it is our opinion and legal conclusion that Deputy Lobato acted lawfully in self-defense and Deputy Austin acted in lawful defense of another. We are closing our file and will take no further action in this matter.

Very truly yours,

STEVE COOLEY
District Attorney

By Daniel W. Baker

DANIEL W. BAKER
Deputy District Attorney
(213) 974-4105

c: Deputy Michael Austin, #[redacted]
Deputy Frank Lobato, #[redacted]